IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

RECEIVED
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SUPREME COURT, U.S.

No. 79-2014

RAYMOND W. ANDERSON
and PAUL W. KEVE,

Petitioners,

v.

THOMAS H. WINSETT,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The respondent, Thomas H. Winsett, who is in the custody of the Delaware Division of Adult Corrections and is now held in Kilby Correctional Facility near Montgomery, Alabama, asks leave to file the attached Brief in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit without prepayment of costs and to proceed in forma pauperis pursuant to Rule 53.

The respondent's affidavit in support of this motion is attached hereto.

ARLEN MEKLER

1700 Farmers Bank Building
Tenth and Market Streets
Wilmington, Delaware 19801

ATTORNEY FOR RESPONDENT

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-2014

RAYMOND W. ANDERSON
and PAUL W. KEVE,

Petitioners,

v.

THOMAS H. WINSETT,

Respondent.

AFFIDAVIT

I, Thomas H. Winsett, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed in forma pauperis:

1. I am the respondent in the above-entitled case;
2. Because of my poverty I am unable to pay the costs of said cause;
3. I am unable to give security for the same;
4. I believe that I am entitled to the redress I seek in said case;
5. The nature of said cause if briefly stated as follows:

This case involves a due process challenge I brought against officials of the Delaware Department of Adult Corrections after they denied my application for work release. The Court of

Appeals for the Third Circuit found that I possessed a state-created liberty interest in participation in the work release program when I met all eligibility requirements under state law and held that the exercise of the prison authorities' discretion must be consistent with the work release policy.

Thomas H. Winsett

THOMAS H. WINSETT

Duly witnessed and sworn
to before me, a Notary
Public, this day
of , 1980.

NOTARY PUBLIC

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CERTIFICATE OF SERVICE

STATE OF DELAWARE)
)
NEW CASTLE COUNTY)

BE IT REMEMBERED, that on this 8th day of July, 1980, Arlen Mekler, a member of the Bar of The Supreme Court of the United States, and being duly sworn according to law deposes and says that he forwarded a copy of Petition for a Writ of Certiorari to John Parkins, Esquire, Department of Justice, 820 N. French Street, Wilmington, Delaware 19801, by United States mail with postage prepaid.

ARLEN MEKLER

SWORN TO AND SUBSCRIBED
before me this 8th day
of July, 1980.

Notary Public

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OCTOBER TERM, 1979

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Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

ARLEN MEKLER, ESQUIRE
1700 Farmers Bank Building
Tenth and Market Streets
ATTORNEY FOR RESPONDENT

IN THE

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UNITED STATES COURT OF APPEALS
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RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Thomas H. Winsett, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Third Circuit's opinion in this case. That opinion, not yet reported, is set out at pages A-3 through A-42 of the petition.

REASONS WHY THE WRIT SHOULD BE DENIED

1. The Decision of the Court of Appeals does not conflict with Decisions of this Court.

Petitioner contends that respondent Winsett has failed to show the existence of a liberty interest protected by the Fourteenth Amendment to the United States Constitution. Petitioner argues that the Court of Appeals ignored prior decisions of this Court and found that respondent had raised valid due process claim despite his alleged failure to meet this threshhold requirement. Petitioner misreads the decisions of this Court and the Court of Appeals' decision in this case.

As petitioner noted, this Court has repeatedly held that a mere unilateral expectancy is insufficient to give rise to a liberty interest protected by the Fourteenth Amendment. A person must have a legitimate claim of entitlement to establish the liberty interest that a prerequisite to invoking the Fourteenth Amendment's protection. Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1973). Petitioner errs, however, in claiming that the Court of Appeals "made no finding that a specific statute or regulation conferred on (respondent) an entitlement to participate in the work release program." (Petition, p.7)

Petitioner is attempting to create a new requirement for obtaining relief: that a specific statute or regulation confers a particular right on an individual. This Court has never enunciated such a requirement. A liberty interest can arise as the result of official policies or practices. In Durso v. Rowe, 579 F.2d 1365 (7th Cir. 1978), cert. denied, 439 U.S. 1121 (1979), the Seventh Circuit held that a liberty interest exists where a prisoner proves the existence of a regular practice by prison officials that work release will not be revoked absent a prisoner's rule violation. Here, the Third Circuit found that the regulations governing work release in Delaware created a protectible liberty interest because the regulations indicated that the prison officials' discretion could "be exercised only within established parameters." (A22, citing Tracy v. Salomack, 572 F.2d 393 (2d Cir. 1978)).

No decision of this Court supports petitioner's argument. The Court of Appeals properly found the existence of a protectible liberty interest. This Court should deny the petition.

2. The Court of Appeals' reasoning and result have only limited application.

Petitioner argues that the Court of Appeals' ruling has broad application because of the prevalence of statutes similar to Delaware's work release statute, Del.C.Ann. tit. 11, §6531 (A55). In fact, the decision below has very limited application.

The opinion below manifests the peculiar facts upon which it rests. Respondent was convicted of a crime that aroused unusual public furor. Respondent's case is unique in its political sensitivity. It is difficult to imagine other litigants who can rival respondent's lengthy history of political oppression. The decision below turns upon its own facts and will affect few, if any, others than the litigants. It does not encourage federal courts to supervise day-to-day decisions of prison administrators. The Court of Appeals' ruling serves only to protect prisoners from particularly egregious conduct by prison officials that violates fundamental rights and constitutional protections that remain despite incarceration. See Wolf v. McDonnell, 418 U.S. 539 (1974).

CONCLUSION

For the foregoing reasons, this Court should decline to issue a writ of certiorari to review the opinion and judgment of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

ARLEN MEKLER, ESQUIRE
1700 Farmers Bank Building
Tenth and Market Streets
Wilmington, Delaware 19801
ATTORNEY FOR RESPONDENT

6/30/80/REW

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THOMAS H. WINSETT

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